

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 12-127-01-CR-W-GAF
)	
THOMAS SHIELDS,)	
)	
Defendant.)	

ORDER

Before the Court are Defendant's Motion to Dismiss Asserting Affirmative Defense (Doc. 30), Judge Maughmer's Report and Recommendation on Defendant's Motion to Dismiss (Doc. 47), the Government's Motion for an Order on Admissibility of Evidence Pursuant to Rule 104 (Doc. 55) and the Government's Rule 12(d) Motion for Rule on Pretrial Motion No Later than the Friday Before Trial (Doc. 56).

Magistrate Judge Maughmer has recommended that the undersigned deny Defendant's motion to dismiss without prejudice to renewal of Defendant's arguments at trial. Defendant did not file objections to the Report and Recommendation. After an independent review of the applicable law and the parties' arguments, the Court adopts the Magistrate's recommendation. Accordingly, the Court orders that Judge Maughmer's Report and Recommendation be attached to and made a part of this Order, and denies Defendant's motion to dismiss.

Regarding the Government's evidentiary motions, the Court finds that, pursuant to Eighth Circuit law, the child pornography files recovered from the defendant's computer are admissible. See, e.g., United States v. Worthey, 716 F.3d 1107, 14-15 (8th Cir. 2013); United States v. McCourt, 468 F.3d 1088, 1091-93 (8th Cir. 2006); United States v. Becht, 267 F.3d 767, 773 (8th Cir. 2001). However, the determination as to which images and/or videos may be shown requires the Court to conduct an analysis pursuant to Rule 403 of the Federal Rules of Evidence. See Worthey, 716 F.3d at 1114-15; McCourt, 468 F.3d at 1092-93. Accordingly, the Court grants the Government's motion for an order of admissibility of evidence, but reserves its decision regarding which evidence will be admissible until after it conducts a Rule 403 analysis.

For the foregoing reasons, it is hereby ORDERED that:

- (1) The Court ADOPTS Judge Maughmer's Report and Recommendation (Doc. 47);
- (2) Defendant's Motion to Dismiss Asserting Affirmative Defense (Doc. 30) is DENIED without prejudice to renewal of Defendant's arguments at trial;
- (3) The Government's Motion for an Order on Admissibility of Evidence Pursuant to Rule 104 (Doc. 55) is GRANTED with the Court reserving ruling on which evidence is admissible until after it conducts a Rule 403 analysis; and

(4) The Government's Rule 12(d) Motion for Rule on Pretrial Motion No Later than the Friday Before Trial (Doc. 56) is GRANTED.

SO ORDERED.

Date: September 13, 2013

/s/ Dean Whipple
Dean Whipple
United States District Judge